

Employee Benefit Plans

Employee Retirement Income Security Act (ERISA), (29 USC §1001 *et seq.*, 29 CFR Parts 2509 *et seq.*)

Who is Covered

The provisions of Title I of the Employee Retirement Income Security Act (ERISA) cover most private sector employee benefit plans. Such plans are voluntarily established and maintained by an employer, an employee organization, or jointly by one or more such employers and an employee organization.

Pension plans—a type of employee benefit plan—are established and maintained to provide retirement income or to defer income until termination of covered employment or beyond. Other employee benefit plans, called welfare plans, are established and maintained to provide health benefits, disability benefits, death benefits, prepaid legal services, vacation benefits, day care centers, scholarship funds, apprenticeship and training benefits, or other similar benefits.

In general, ERISA does not cover plans established or maintained by government entities or churches for their employees, or plans which are maintained solely to comply with workers' compensation, unemployment, or disability laws. ERISA also does not cover plans maintained outside the United States primarily for the benefit of nonresident aliens or unfunded excess benefit plans.


Basic Provisions/Requirements

ERISA sets uniform minimum standards to ensure that employee benefit plans are established and maintained in a fair and financially sound manner. In addition, employers have an obligation to provide promised benefits and satisfy ERISA's requirements for managing and administering private pension and welfare plans.

The Department's Employee Benefits Security Administration (EBSA), together with the Internal Revenue Service (IRS), has the statutory and regulatory authority to ensure that workers receive the promised benefits. The Department has principal jurisdiction over Title I of ERISA, which requires persons and entities that manage and control plan funds to:

- Manage plans for the exclusive benefit of participants and beneficiaries;
- Carry out their duties in a prudent manner and refrain from conflict-of-interest transactions expressly prohibited by law;
- Comply with limitations on certain plans' investments in employer securities and properties;

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- Fund benefits in accordance with the law and plan rules;
 - Report and disclose information on the operations and financial condition of plans to the government and participants; and
 - Provide documents required in the conduct of investigations to ensure compliance with the law.

The Department also has jurisdiction over the prohibited transaction provisions of Title II of ERISA. However, the IRS generally administers the rest of Title II of ERISA, as well as the standards of Title I of ERISA that address vesting, participation, nondiscrimination, and funding.

Reporting and Disclosure. Any individual or organization affected by ERISA may request an advisory opinion or information letter about the interpretation or application of the statutory provisions (or the implementing regulations, interpretive bulletins, or exemptions) within the Department's jurisdiction. *ERISA Procedure 76-1*, 41 *Federal Register* 36281 (August 27, 1976) sets forth the procedures governing the advisory opinion process.

Part 1 of Title I requires the administrator of an employee benefit plan to furnish participants and beneficiaries with a summary plan description (SPD), clearly describing their rights, benefits, and responsibilities under the plan. Plan administrators must also furnish participants with a summary of any material changes to the plan or changes to the information contained in the SPD. Copies of these documents need not be automatically filed with the Department, but they must be furnished to the Department on request.

In addition, the administrator generally must file an annual report (Form 5500 Series) each year containing financial and other information about the operation of the plan. Plan administrators filing annual reports must furnish participants and beneficiaries with a summary of the information in the annual report (the Summary Annual Report).

Certain pension and welfare benefit plans may be exempt from the requirement to file an annual report. For example, welfare benefit plans with fewer than 100 participants that are fully insured or unfunded within the meaning of the Department's regulation at 29 CFR 2520.104-20 are not required to file an annual report.

The Department's regulations governing these reporting and disclosure requirements are set forth beginning at 29 CFR 2520.1011.

Fiduciary Standards. Part 4 of Title I sets forth standards and rules for the conduct of plan fiduciaries. In general, persons who exercise discretionary authority or control over management of a plan or disposition of its assets are "fiduciaries" for purposes of Title I of ERISA. Fiduciaries are required, among other things, to discharge their duties solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. In discharging their duties, fiduciaries must act prudently and in accordance with documents governing the plan, to the extent such documents are consistent with ERISA.

ERISA prohibits certain transactions between an employee benefit plan and "parties in interest," which include the employer and others who may be in a position to exercise improper influence over the plan, and such transactions may trigger civil monetary penalties under Title I of ERISA. The Internal Revenue Code ("Code") also prohibits most of these transactions, and it imposes an excise tax on "disqualified persons" (whose definition generally parallels that of parties in interest) who participate in such transactions.

Exemptions. Both ERISA and the Code contain various statutory exemptions from the prohibited transaction rules and give the Departments of Labor and Treasury, respectively, authority to grant administrative exemptions and establish exemption procedures. Reorganization Plan No. 4 of 1978 transferred the Treasury Department's authority over prohibited transaction exemptions to the Labor Department, with certain exceptions.

The statutory exemptions generally include loans to participants, the provision of services needed to operate a plan for reasonable compensation, loans to employee stock ownership plans, and investment with certain financial institutions regulated by other state or federal agencies. (See ERISA Section 408 for the conditions of the exemptions.) The Department of Labor may grant administrative exemptions on a class or individual basis for a wide variety of proposed transactions with a plan. Applications for individual exemptions must include, among other information:

- A detailed description of the exemption transaction and the parties for whom an exemption is requested;
- The reasons a plan would have for entering into the transaction;
- The percentage of assets involved in the exemption transaction;
- The names of persons with investment discretion;
- The extent of plan assets already invested in loans to, property leased by, and securities issued by parties in interest involved in the transaction;
- Copies of all contracts, agreements, instruments, and relevant portions of plan documents and trust agreements bearing on the exemption transaction;
- Information about plan participation in pooled funds when the exemption transaction involves such funds;
- A declaration by the applicant, under penalty of perjury, attesting to the truth of representations made in such exemption submissions; and
- Statement of consent by third-party experts acknowledging that their statement is being submitted to the Department as part of an exemption application.

The Department's exemption procedures are set forth at 29 CFR 2570.30 through 2570.51.

Continuation of Health Coverage. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) included provisions for continuing health care coverage. These provisions, which are codified in Part 6 of Title I of ERISA, apply to group health plans of employers with 20 or more employees on a typical working day in the previous calendar year.

COBRA gives "qualified beneficiaries" (a covered employee's spouse and dependent children) the right to maintain, at their own expense, coverage under their health plan that would be lost due to a "qualifying event," such as termination of employment, at a cost comparable to what it would be if they were still members of the employer's group.

Plans must give covered individuals an initial general notice informing them of their rights under COBRA and describing the law. The law also obliges plan administrators, employers, and qualified beneficiaries to provide notice of certain "qualifying events."

In most instances of employee death, termination, reduced hours of employment, entitlement to Medicare, or bankruptcy, the employer must provide a specific notice to the plan administrator. The plan administrator must then advise the qualified beneficiaries of the opportunity to elect continuation coverage.

The Department's regulatory and interpretive jurisdiction over the COBRA provisions is limited to the COBRA notification and disclosure provisions.

Jurisdiction of the Internal Revenue Service. The IRS has regulatory and interpretive responsibility for all provisions of COBRA not under the Department's jurisdiction. In addition, the IRS generally administers and interprets the ERISA provisions relating to participation, vesting, funding, and benefit accrual, contained in parts 2 and 3 of Title I.

Health Insurance Portability and Accountability Act of 1996. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, was enacted on August 21, 1996. HIPAA amended ERISA to provide for improved portability and continuity of health insurance coverage connected with employment, among other things.

The HIPAA portability provisions relating to group health plans and health insurance coverage offered in connection with group health plans are set forth under a new Part 7 of Subtitle B of Title I of ERISA. These provisions include rules relating to exclusions of preexisting conditions, special enrollment rights, and prohibition of discrimination against individuals based on health status-related factors.

The Newborns' and Mothers' Health Protection Act of 1996, signed into law on September 26, 1996, requires plans that offer maternity coverage to pay for at least a 48-hour hospital stay following childbirth (a 96-hour stay when a cesarean section is performed).

The Women's Health and Cancer Rights Act, signed into law on October 21, 1998, contains protection for patients who elect breast reconstruction in connection with a mastectomy. For plan participants and beneficiaries receiving benefits in connection with a mastectomy, plans offering coverage for a mastectomy must also cover reconstructive surgery and other benefits related to a mastectomy.

Employee Rights

The Act grants employees several important rights. Among them are the right to receive important information about their pension or health benefit plans, to participate in timely and fair processes for benefit claims, to elect to temporarily continue group health coverage after losing coverage, to receive certificates verifying health coverage under a plan, and to recover benefits due under the plan.

Compliance Assistance Available

EBSA has numerous general publications designed to help employers and employees understand their obligations and rights under ERISA. A list of EBSA booklets and pamphlets is available by writing to: U.S. Department of Labor, Publications Desk, EBSA, Division of Public Affairs, Room N5656, 200 Constitution Avenue NW, Washington, D.C. 20210. Many of these documents are available from EBSA's Home Page (www.dol.gov/ebsa) and through EBSA's toll-free publications line at 1-800-998-7542.

The *e/laws* Small Business Retirement Savings Advisor, available at www.dol.gov/elaws/pwbbaplan.htm, provides answers to a variety of questions about retirement savings options for small business employers and indicates which program is most appropriate for a business.

EBSA's national and field offices offer individualized assistance for persons seeking information and assistance on benefits and rights under employee benefit plans. EBSA also issues advisory opinions and information letters in response to requests from individuals and organizations. Advisory opinions apply the law to a specific set of facts, while information letters merely call attention to well-established principles or interpretations. Further information about these programs is contained in EBSA's booklet on "Customer Service Standards."

In addition, employee benefit plan documents and other materials are available from the EBSA Public Disclosure Room. This facility may be used to view and to obtain copies of materials on file. Materials include: summary plan descriptions, Form 5500 Series reports, Master Trust reports, 10312 Investment Entity Reports, Common or Collective Trust or Pooled Separate Account direct filings, Apprenticeship and Other Training Plans notices, "Top Hat" plan statements, advisory opinions, exemptions, announcements, and transcripts of public hearings and proceedings.

The EBSA Public Disclosure Room is open to the public Monday through Friday, from 8:30 a.m. to 4:30 p.m. Copies of materials are available at a cost of 15 cents per page by ordering in person or writing to: U.S. Department of Labor, EBSA Public Disclosure Room, Room N1513, 200 Constitution Avenue NW, Washington, D.C. 20210. Given the complexity of ERISA requirements, employers may wish to seek the assistance of an attorney, CPA firm, investment or brokerage firm, and other employee benefit consultants.

Penalties/Sanctions

ERISA confers substantial law enforcement responsibilities on the Department. Part 5 of Title I of ERISA gives the Department authority to bring a civil action to correct violations of the law, provides investigative authority to determine whether any person has violated Title I, and imposes criminal penalties on any person who willfully violates any provision of Part 1 of Title I.

EBSA has authority under ERISA Section 502(c)(2) to assess civil penalties for reporting violations. A penalty of up to \$1,000 per day may be assessed against plan administrators who fail or refuse to comply with annual reporting requirements. Section 502(i) gives the agency authority to assess civil penalties against parties in interest who engage in prohibited transactions with welfare and nonqualified pension plans. The penalty can range from five percent to 100 percent of the amount involved in a transaction.

A parallel provision of the Code directly imposes an excise tax against disqualified persons, including employee benefit plan sponsors and service providers, who engage in prohibited transactions with tax-qualified pension and profit sharing plans.

Finally, Section 502(l) requires the Department to assess mandatory civil penalties equal to 20 percent of any amount recovered with respect to fiduciary breaches resulting from either a settlement agreement with the Department or a court order as the result of a lawsuit by the Department.



Relation to State, Local, and Other Federal Laws

Part 5 of Title I states that the provisions of ERISA Titles I and IV supersede state and local laws which “relate to” an employee benefit plan. ERISA, however, does not preempt certain state and local laws, including state insurance regulation of multiple employer welfare arrangements (MEWAs). MEWAs generally constitute employee welfare benefit plans or other arrangements providing welfare benefits to employees of more than one employer, not pursuant to a collective bargaining agreement.

In addition, ERISA’s general prohibitions against assignment or alienation of pension benefits do not apply to qualified domestic relations orders. Plan administrators must comply with the terms of qualifying orders made pursuant to state domestic relations law that award all or part of a participant’s benefit in the form of child support, alimony, or marital property rights to an alternative payee (spouse, former spouse, child, or other dependent). Finally, group health plans covered by ERISA must provide benefits in accordance with the requirements of qualified medical child support orders issued under state domestic relations laws.